HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5992 OF 1999.

Kasai Dodamarg Shikshan Prasarak
Mandal, Dodamarg, Taluka:
Sawantwadi, Dist: Sindhudurg. ..Petitioner.

Versus.

1. State of Maharashtra,
through: Secretary Secondary
Education, Mantralaya, Mumbai

2. The Director of Education,
Maharashtra State,
Central Bldg, Pune.

3. The Dy. Director of Education,
Hatti Mahal Road, Near
Mutton Market, Kolhapur.

4. The Education Officer,
Z.P. Complex, Oras,
Dist: Sindhudurg.

5. Kai. Baburao Patyekar Shikshan
Prasarak Mandal, Zare-Bamber,
Tal: Sawantwadi, Dist: Sindhudurg,
through: its Promoter Babal Naik @
Zilla Patyekar. ..Respondents.

Shri. S. G. Ghogare for the Petitioner.

Shri. M. A. Choudhari for the respondent No.5.

Shri. C. R. Sonawane, AGP for the Respondent Nos. 1
to 4-State.

CORAM: S.B.MHASE &
D.G.KARNIK, JJ.

DATE : FEBRUARY 14, 2006.

ORAL JUDGMENT (Per D. G. Karnik,J.).

1. Heard counsel for the appearing parties.

2. By this petition, the petitioner challenges the order dated August 10, 1999 passed by the respondent no.3, Deputy Director of Education cancelling the permission granted to the petitioner to shift its secondary school from village Patye to village Zare-Bamber.

3. The petitioner society was running a secondary school at village Patye, taluka Sawantwadi, district Sindhudurg from the year 1993-94. The village Patye was likely to be submerged under the Tilari Irrigation Project. It appears that it was proposed that the villagers of the village Patye were to be resettled at village Zare-Bamber. Therefore, by letters dated January 16, 1996, February 22, 1996 the petitioner was granted permission to shift its secondary school from village Patye to village Zare- Bamber. Accordingly, from the year June 1996 the petitioner shifted its school from village Patye to village Zare Bamber.

4. Thereafter by letter dated August 10, 1993, the respondent no.3 informed the petitioner that the Government had decided to chancel its earlier decision granting permission for shifting of the secondary school

from village Patye to village Zare-Bamber. By the said letter the petitioner was asked to re-shift the school from village Zare-Bamber to village Patye. That letter is impugned in this petition.

5. Learned counsel for the petitioner raised several challenges to the letter dated August 10, 1999. He firstly submitted that since the village Patye would be submerged under the Tilari Irrigation Project, there is no need to have a secondary school at village Patye. Secondly, he submitted that in pursuance of the permission granted to the petitioner vide letters dated 16th January 1996 and 22nd February 1996, the petitioner had closed its school at village Patye and shifted it to village Zare-Bamber. The petitioner had incurred expenditure in shifting and opening of the school at village Zare -Bamber. The petitioner had done this on the basis of the permission granted by the government for shifting of the school. Therefore the respondents were not entitled to cancel the permission which was given to the petitioner to shift the school. He further submitted that the decision dated August 10, 1999 was taken at the instance of and to favour the respondent no.5. The respondent no.5 was running an unauthorised secondary school at village Zare-Bamber and in order to regularise the unauthorised school run by the respondent

No.5, the permission granted to the petitioner to shift the school to village Zare Bamber from village Patye was cancelled. He submitted that there was intrinsic evidence that in the order dated August 10, 1999 itself that it was passed to favour the respondent no.5. He invited our attention to the last paragraph of letter dated August 10, 1999 from which it is clear by the very letter by which the permission of shifting the school granted to the petitioner was cancelled permission granted to respondent no.5 to open the school at Zare-Bamber for the year 1999-2000. He further submitted that till the year 1999-2000, the respondent no.5 had no permission to conduct the school and it was unauthorizedly conducting the school at village Zare-Bamber. As respondent no.5 did not have enough students in its school, in order to favour the respondent no.5 direction was issued to the petitioner to close its school at village Zare-Bamber and reopen it at village Patye.

6. Learned counsel for the respondent no.5 strongly denied the allegations made against it. In its affidavit in reply, the respondent no.5 has admitted that it is running a school at village Zare-Bamber from the year 1996-97. However, there is no reference in the affidavit in reply of any permission granted to it for

running the school from the year 1996-97 and there is no denial of the assertion of the petitioner that the permission was given to the respondent no.5 to open the secondary school for the first time in the year 1999-2000.

7. Shri. C.R.Sonawane learned A.G.P. also supported the decision of the government conveyed to the petitioner vide letter dated August 10, 1999. He submitted that village Patye would not be resettled at village Zare- Bambre but would be resettled at village Sasoli, Taluka Dodamarg, District Sindhudurg. He submitted that since the villagers of village Patye were to be resettled at village Sasoli and not to village Zare-Bamber, the permission granted to the petitioner to shift the school from village Patye to village Zare-Bambre was revoked. By our order dated January 13, 2006 we directed the government to produce for our inspection all documents and notifications issued under sections 13, 14 & 15 of the Maharashtra Resettlement of Project Displaced Persons Resettlement Act, 1976 (for short, "Resettlement Act.") relating to the village Patye. In pursuance of our directions, the respondent nos. 1 to 4 filed two affidavits, one of Shri. Ravindra Dattatraya Bhat dated January 30, 1996 and another of Shri. Ramkrishna Bhaskar Naik dated February

10, 2006, annexing thereto copies of the government gazettes We have perused the copies of the said notifications published in the Maharashtra Government Gazette dated May 20, 1980, November 30, 1981, November 16, 1987 and March 17, 1988. In none of the notifications it is mentioned in what manner and where the villagers of village Patye whose lands and houses were acquired for the Tilari Project were to be resettled. The statement made in the affidavit of Shri. Ravindra Bhat that the village Patye is to be resettled at village Sasoli is not therefore supported by any notification or any other document. Certainly, the decision as to the rehabilitation of one village to another village would have to be taken in accordance with the provisions of sections 13, 14 & 15 of the Resettlement Act which requires a notification to be published in the government gazette. There cannot be any oral decision. In the absence of any notification or document showing any decision as to place where villagers of village Patye were to be resettled, we are unable to accept the contention that the village Patye is to be shifted at village Sasoli.

8. There is one more reason why we cannot accept the statement that the village Patye is to be resettled at village Sasoli. A copy of the letter dated January

21, 2007 written by the District Resettlement Officer is annexed to the affidavit of Ramkrishna Naik. In the said letter it is mentioned that the village Patye is to be resettled at two places, namely, Sasoli, taluka Sawantwadi, District Sindhudurg and at village Sal in Goa State. Thus, according to the District Resettlement Officer who is in charge of the resettlement work the village Patye is to be resettled at two different places and not only at village Sasoli as stated in first affidavit of Shri. Ravindra Dattatraya Bhat. Secondly, village Sal is situated in the State of Goa. We are unable to comprehend how is the Government of Maharashtra is going to acquire lands in another State for resettlement of project affected persons living in the State of Maharashtra, under a State legislation which obviously cannot apply in another State. If the acquisition is to be under the Resettlement Act, which is a State Act, only the lands in the State of Maharashtra and not the lands in State of Goa can be acquired. We are therefore unable to accept the contradictory statements made in the two affidavits of the respondents that the villagers of village Patye were to be resettled at village Sasoli (Maharashtra State) or village Sal (State of Goa).

9. While granting permission for shifting of the

school from village Patye to village Zare Bamber there was a clear cut statement made by the government that the villagers of village Patye were to be resettled at village Zare- Bamber. It was on this basis the permission was given to shift the school from village Patye to village Zare Bamber. If so,there is no reason for the government to cancel the permission given to the petitioner to shift the school from village Patye to village Zare Bamber.

10. We also find substance in the allegation of the petitioner that the order dated August 10, 1999 has been passed to favour the respondent no.5. The respondent no.5 claims that it has been running a school at village Zare-Bamber from the year 1996. However, no document is placed on record to show that the school was being run after obtaining the permission of the government. The permission to open and run the secondary school was granted to the respondent no.5 for the first time in the year 1999-2000 by the very order dated August 10, 1999 by which the permission granted to the petitioner to shift the school from village Patye to village Zare-Bamber was cancelled. Shri. Babulal Ganpat Naik, Chairman of the respondent no.5, has annexed to this affidavit dated 13th June 2005 a copy of the annual inspection report of the school of the

respondent no.5 for the year 1999. The report shows that there were only 18 students, viz., 7 boys and 11 girls admitted in the school of the respondent no.5 in the year 1999-2000. As against about 120 students were admitted and learning in the petitioner's secondary school. It appears that the villagers have reposed more faith in admitting their children in the authorised school of the petitioner which has the strength of more than 100 students than the unauthorised school of the respondent no.5 which has the strength of only 17 students. In the circumstances the contention of the petitioner that permission granted to it to shift its school to village Zare-Bamber was cancelled to favour the respondent no.5 cannot be brushed aside as without substance.

11. For these reasons, the petition must succeed. Accordingly, Rule is made absolute in terms of prayer clauses (b) and (c). The respondent Nos. 1 to 4 shall pay the cost of this petition to the petitioner.

12. Respondent Nos. 1 to 4 shall take the appropriate steps for closing down the unauthorised school of the respondent no.5. The petitioner through its counsel undertakes that on the closure of the unauthorised school of the respondent no.5, the

petitioner would absorb the students in the school of the respondent no. 5 in its school so that the interest of any of the students do not suffer. Undertaking is recorded and accepted.

(D.G.KARNIK,J.) **(S.B.MHASE, J.)**